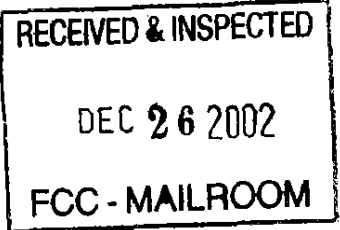


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December 20, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

**RE: Reply Comments to Petition For Reconsideration
 In FCC Docket 99-325 (IBOC Radio Digitalization)**

Dear Commissioners and Commission Staff,

I am writing on behalf of the 36 parties to an October Petition For Reconsideration in FCC Docket MM 99-325. That Petition For Reconsideration was filed by THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC PRESS (VCP) and 32 other concerned parties on October 25, 2002. The number of parties rose to 36 through subsequent declarations filed on behalf of 2 retroactive signatories.

The 36 Parties to that October 25 Petition For Reconsideration now submit Reply Comments *in opposition to* a more recent Petition For Reconsideration in the same Docket. That Petition was filed by GLEN CLARK & ASSOCIATES, a Pennsylvania broadcast consulting firm, through the Washington, DC law firm of Garvey Schubert Barer. The Petition is dated December 10, 2002 but was not posted on the FCC's Electronic Comment Filing System (ECFS) until December 15, 2002.

We urge the Commission to reject the GC&A Petition because it was not timely filed. *Two months have passed before the Petitioner sought reconsideration of the Commission's Order of October 10.* In addition, the December 10 Petition seeks expansion of an Order which is already procedurally premature and based on inadequate evidence, as our own Petition of October 25 demonstrates in some detail.

If the FCC decides to consider the merits of the December 10 GC&A Petition, *in spite of* these concerns, it should *first* consider the merits of our own October 25 Petition. Our Petition was filed well before the GC&A Petition. More importantly, the FCC's approval of our Petition would render consideration of the GC&A Petition moot and unnecessary. Therefore, considering our Petition first is more administratively efficient.

Sincerely,



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Representing the following parties:

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WILW, *Connecticut*
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KOL AMI HAVURAH (Licensee of WVJW-LP), *West Virginia*
SPRYCX COMMUNICATION, *Ohio*
JAMRAG MAGAZINE AND GREEN HOUSE NEWS, *Michigan*
BFATRADIO, *Minnesota*
KIBP-LP, *Texas*
CHALK HILL EDUCATIONAL MEDIA (Licensee of KZQZ-LP), *Texas*
KHKH-FM, *Texas*
REC NETWORKS, *Arizona*
THE KIWANIS CLUB OF WEST VISALIA, *California*
ROGUE COMMUNICATION, *West Virginia*
JAMES JASON WENTWORTH, *Alaska*
MATTHEW HAYES, *Oregon*
JOHN DAVIDSON, *California*
ROD SEGO, *Utah*
KYLE DRAKE, *Minnesota*
JOHN ANDERSON, *Wisconsin*
WILLIAM G. HEBBERT, *Wisconsin*
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ERICH LOEPKE, *Texas*
ROBERT CHANEY, *Louisiana*
STEPHEN C. BRINGHUKST, *Alabama*

Cover Letter From THE AMHERST ALLIANCE **And** 35 Others
Re RFPL Y COMMFNTS In FCC Docket MM 99-325
December 20,2002
Page Three

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THE AMHERST ALLIANCE, VIRGINIA CENTER FOR THE PUBLIC PRESS (VCP), CITIZENS MEDIA CORPS/ALLSTON-BRIGHTON FREE RADIO, WILW, AURICLE COMMUNICATIONS (Licensee of WFMU and KXHD), KOL AMI HAVURAH (Licensee of WVJW-LP), SPRYEX COMMUNICATIONS, **JAMRAG** MAGAZINE AND **GREEN HOUSE NEWS**, BEATRADIO, KIBP-LP, CHALK HILL EDUCATIONAL MEDIA, INC. (Licensee of KZQZ-LP), KBKH-FM, REC NETWORKS, THE **KIWANIS** CLUB OF WEST VISALIA, ROGUE COMMUNICATION, JAMES JASON WENTWORTH, MATTHEW HAYES, JOHN DAVIDSON, ROD SEGO, KYLE DRAKE, JOHN ANDERSON, WILLIAM G. HEBBERT, JOHNETHAN E. GRANT, ERICH LOEPKE, ROBERT CHANEY, STEPHEN C. BRINGHURST, **NICKOLAUS E. LEGGETT (N3NL)**, JOHN ROBERT BENJAMIN, WILLIAM H. BEYRER, W. REECE NEWTON, RICHARD A. SHIVERS (**KB3FGJ**), MIKE ERICKSON, GERALD JOHN **MEHRAB (WA2FNQ)**, KEVIN JOHNSTON, WESLE **ANNEMARIE** DYMOKE AND JACK FLANAGAN

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These Reply Comments are filed on behalf of IS organizations and 21 individuals all of whom are parties to an October Petition For Reconsideration in FCC Docket MM 99-325, which concerns In Hand On Channel (IHOC) Radio Digitalization. In general, these 36 parties are a coalition of citizens' advocacy groups, small existing or aspiring broadcasters (primarily, but not exclusively, non-profit), Amateur Radio Service operators and concerned radio listeners. Descriptions of these various individual parties can be found within the body of our Petition For Reconsideration, which we hereby incorporate by reference.

Our Petition For Reconsideration was timely filed on October 25, 2002, in response to the Commission's Order authorizing immediate IBOC broadcasting on an "interim" basis, on October 11, 2002. We filed within 15 calendar days of the FCC's Order.

Our Reply Comments are directed to a Petition For Reconsideration filed by GLEN CLARK & ASSOCIATES (GC&A), a Pittsburgh broadcast consulting firm, through the Washington, DC law firm of Garvey Schubert Barer. The Petition was filed on December 10, 2002, but not posted on the Electronic Comment Filing System (ECFS) until December 15, 2002. It was filed 2 months after the FCC's Order of October 11.

The difference in filing dates is a major contrast between the GC&A Petition and our own. Another major difference is that our Petition urges the FCC to suspend its Order, at least pending the resolution of certain proceedings, whereas the GC&A Petition would expand the Order by allowing *nighttime* IBOC broadcasts on the AM band.

EXECUTIVE SUMMARY

We strongly oppose the GCBA Petition. We urge the Commission to deny it on the following grounds:

1. The GCLA Petition was not timely filed. Our own October 25 Petition **For** Reconsideration was filed within **15** days of the Commission's Order, approving In Band On Channel (IBOC) Radio Digitalization, on October 11. By contrast, the GCLA Petition was filed 2 months after the IBOC Order.

2. The GCBA Petition would expand an Order which is itself procedurally premature and based on inadequate evidence. In this regard, we refer the Commission to the arguments in our October 25 Petition For Reconsideration, which we have incorporated in these Reply Comments by reference.

3. The GCBA Petition, like the Commission's IBOC Order itself, assumes an urgent need to initiate IBOC broadcasting as rapidly as possible. However, neither GCLA nor the **FCC** have demonstrated or documented the need for such speed.

4. The **GC&A** Petition assumes that daytime **IBOC** broadcasting on **AM** frequencies will cause no interference — and then focuses on whether interference from **AM** nighttime **IBOC** broadcasting can be avoided through a policy less restrictive than the current ban on all nighttime **IBOC** broadcasts on the **AM** Band. The Commission has already acknowledged, however, that interference from **IBOC** will be a general problem, not limited to nighttime **AM** alone. Before the Commission allows any “interim” **IBOC** broadcasts, by day or at night, over **AM** or **FM**, the Commission should deal with the concerns expressed by various parties about all kinds of *interference* from **IBOC**.

In addition:

5. *If*, despite the concerns we have expressed, the Commission decides to consider the merits of **GC&A's** Petition For Reconsideration, the merits of our own Petition should be considered first. This is administratively **efficient**, since approval of our Petition would render the **GC&A** Petition moot.

The Timeliness Of GC&A's Filing

As we stated above, GC&A's Petition For Reconsideration should be denied because it was *not* timely filed. The Petition should be denied on its face, before its substantive merits are even considered, because it was filed so long after the Commission's Order was issued in this Docket.

We are reluctant to point our collective fingers at GC&A because some of the parties in our coalition have *occasionally* missed a filing deadline at the FCC themselves. Still, the worst late filing we could find in our own ranks was a miss of the deadline by 3 days. GC&A missed the deadline for Reconsideration Petitions by 6 weeks, expressing itself 2 months after the IBOC Order was issued. Further, GC&A has not even apologized for the time lapse, let alone provided an explanation for it.

The Commission's rules for timely filings will mean very little if missing the deadline by 6 weeks, without a *very* good explanation, **can** be overlooked.

There is also a matter of *equity*. The 36 parties to the October 25 Petition "played within the rules" and filed within 15 days of the October 11 Order. Thus, we had only 2 weeks to prepare our Petition, while GC&A gave itself 8 weeks.

If we had 8 weeks to prepare our Petition, we could have used the extra time to prepare an even stronger case than the one we presented. Thus, it is not equitable to let GC&A take 4 times the amount of time that we were allowed, under the rules. Such different treatment of *competing* parties, if allowed, would be arbitrary and capricious.

The Unproven Need For Speed

In its October 11, 2002 decision to approve IBOC, a key rationale for approval of IBOC: the supposed urgency of proceeding immediately with Radio Digitalization. The Commission even took the unusual step of allowing "interim" IBOC broadcasting to begin immediately, *before* its "service rules" for IBOC operations have been established -- or even proposed.

This is the kind of haste, and disregard for contemplation, which administrative agencies normally reserve for national emergencies.

Now GC&A is asserting that one of the *few* cautious decisions in the 99-325 Order should be tossed aside in the interest of moving to full IBOC implementation at a breakneck pace.

Yet this "need for speed" has been *assumed*, rather than demonstrated or documented. Neither GC&A nor the FCC have yet explained, or even begun to explain, *why* IBOC is needed *so* quickly that a "rush to judgment" is justified.

A We note that an explanation of sorts has been offered On The Record by Patricia Paoletta, an attorney at Washington's Wiley, Rein & Fielding. Ms. Paoletta, who is one of several lawyers representing iBiquity Digital Corporation, made the following statement in an August 12, 2002 letter in FCC Docket 99-325, summarizing the essence of an *ex parte* presentation:

Mr [Albert] Shuldiner [Vice President & General Counsel for iBiquity Digital Corporation] explained that without FCC action, and subsequent broadcasting of IBOC over the course of the Fall, IBOC receivers at the CES show in January were unlikely to be successfully launched. In turn, without a successful CES show, rack space in retail stores would not be allocated, receivers would not be sold in mass, and consumers would have to wait an additional year to receive digital radio.

Despite the expressed concern about consumers who are eagerly awaiting the introduction of digital radio equipment, the fact that is that Docket 99-325 lacks *any* solid evidence that radio listeners are looking forward to Radio Digitalization, or are even *aware* of Radio Digitalization. Let alone are pining away for it. There is, therefore, no basis for the claim that IBOC Radio Digitalization is needed quickly to enhance the "competitiveness" of radio broadcasting with satellite transmissions, the Internet and other rival forms of communication.

How can it be assumed that IBOC will make radio broadcasting more "competitive" when it has not even been shown that IBOC will be *popular*?

Indeed, all of the evidence on this point in Docket 99-325 points the other way -- toward consumer *opposition* to Radio Digitalization, or at least to the IBOC version of it] among those consumers who are knowledgeable enough to speak out.

It is difficult to find within Docket 99-325 a single rank-and-file radio listener who has filed Comments in support of IBOC, but many can be found who have filed Comments against it.

Therefore, although the broadcasting consultants at GC&A (and their large broadcaster clients), as well as attorneys for iBiquity may indeed be concerned that a few months of delay in FCC approval of IBOC might delay the commercial onset of IBOC for a year, the consequence they fear is not impatient consumers but impeded cash flow.

However, the cash flow concerns of GCBA, large broadcasters and iBiquity Digital Corporation are not valid grounds for a "rush to judgment" *by the FCC*. The FCC Commissioners and staff are supposed to be concerned *first* with the listeners whose taxes fund their operations -- and whose votes elect the legislators who oversee them. Instead, the Commission's October 11 Order on IBOC includes the authorization for interim IBOC broadcasting to begin *before* the "service rules" to regulate it have even been proposed -- and now GC&A, whose income flows primarily from large broadcasting corporations, is asking for extension of this "blank check" to the one major form of IBOC broadcasting on which the Commission has wisely reserved judgment.

If one or more of the iBiquity sponsors require a "bailout" for bad investments, in IBOC and/or other ventures, then the Commission should consider what *direct* financial assistance, if any, is appropriate. The Commission should *not* attempt to address corporate *financial* problems, of massive debt and/or under-capitalization, by foisting upon the general public, and upon the natural environment, a *technological* approach that is flawed and environmentally questionable, with fundamentally under-examined potential consequences.

B. **As** a related point, the Commission should bear in mind -- but apparently has not -- that the entire chorus of cries for “urgent” implementation of IBOC comes from parties with a *financial self-interest* in the IBOC technology. While this self-interest is obvious in the case of iBiquity Digital Corporation, which plans to market the technology, it must also be remembered that most of the large broadcasters **who** will *buy* the IBOC technology *also* hold stock in the technology. For the **most** part, *the large broadcasters will be selling the IBOC equipment to themselves.*

Large broadcasters, in short, are inherently unable to provide an *objective* evaluation of IBOC technology. While they are potential IBOC consumers, they are also potential IBOC manufacturers.

Yet the Commission, in responding to proclamations by GC&A and its clients that the need for IBOC implementation is “urgent”, has made no apparent effort to discount these proclamations, in any way, to adjust for the inherent conflicts of interests in their assessments.

At the same time, the Commission has largely ignored the views of those commenters who *are not* influenced by such a conflict of interest -- beginning with the rank-and-file radio listeners of America.

In its Order, the FCC acknowledged that most commenting listeners had been critical. However, it dismissed listener objections by stating “there is no appreciable support within the broadcasting community” **for** Digitalization alternatives to IBOC.

In fact, there *are* broadcasters who oppose IBOC. Some of them are even parties to the October 25, 2002 Petition for Reconsideration. Our Petition has drawn support from several Part 15 broadcasters -- 3 Low Power FM licensees -- several *aspiring* Low Power FM licensees -- two Non-Commercial Educational stations and KBKH-FM of Texas, a full power commercial station, as well. Other full power commercial stations, such as Kings Ray Radio in Georgia, are not parties to our Petition For Reconsideration but have nevertheless expressed opposition to IBOC in their 99-325 Written Comments.

It should also be noted that the Grassroots Radio Conference -- the equivalent of a trade association advisory group for community-oriented Non-Commercial Educational stations -- adopted on August 11, 2002 a Resolution which recommends that all NCE stations should oppose IBOC Radio Digitalization. That Resolution was adopted *by acclamation* -- that is, unanimously -- at a national meeting which drew more than 100 employees of 38 radio stations.

Therefore, the conflict over IBOC is not solely between radio listeners and "the broadcasting community". The conflict is between radio listeners and *large* broadcasting companies, with an increasing number of small broadcasters beginning to align themselves with their listeners.

C In addition to the fact that *virtually every large broadcaster who supports IBOC technology has an equity interest in that technology*, the Commission also needs to consider *another* conflict of interest among those corporations who call IBOC implementation “urgent”

That is: *Large broadcasters stand to gain substantial revenues from IBOC’s auxiliary channels.* How objectively can large radio broadcasters assess IBOC’s potential value (or lack thereof) for radio listeners -- when IBOC may make more money ~~Or~~ those companies from auxiliary uses than from radio? It may be understandable for large broadcasters to look first to the *overall* impact of IBOC on their stockholders, but the Commission has no such excuse for giving short shrift to the expressed views of radio listeners. *Listeners* are the “stockholders” of the FCC

Arguments In Our October 25 Petition For Reconsideration

The Commission should also deny the GC&A’s December 10 Petition because, as we noted above, it would expand an Order which is already procedurally premature and based on inadequate information. In this regard, we cite the arguments in our October 25 Petition For Reconsideration, which we have incorporated in these Reply Comments by reference

Radio Interference

As we have noted above, the GC&A Petition assumes that IBOC generally causes no radio interference -- and then asks why nighttime IBOC broadcasts on **AM** should be restricted across-the-board. In Fact, however, the record in FCC Docket MM 99-325 shows expressions of concern about IBOC interference with *all* kinds of radio: AM and FM, nighttime and daytime. The FCC should investigate *all* forms of IBOC interference more closely before it allows *any* IBOC broadcasts.

Consideration Of The Two Competing Petitions

If the Commission decides to consider the merits of the GC&A Petition, then -- as we noted above -- the merits of our October 25 Petition should be considered *first*. Our Petition was filed first, by a margin of 6 weeks, *and* approval of our Petition would render consideration of the GC&A Petition moot and unnecessary.

CONCLUSION

For all of the reasons we have mentioned, as well as the procedural arguments made in our October 25 Petition For Reconsideration, we urge the Commission to reconsider its "rush to judgment" on IBOC. Specifically, we again urge the FCC to suspend its October 11 Order, at least pending the completion of various relevant proceedings. We also urge the Commission to deny the December 10 Petition For Reconsideration by Glen Clark & Associates.

//, despite our concerns, the Commission decides **to** consider the December 10
Petition For Reconsideration, **we** urge the Commission to consider *first* the merits of our
own October 25 Petition For Reconsideration. This course would be more equiiable *and*
more administratively efficient -- since the Commission's approval of the October 25
Petition would render consideration of the December 10 Petition moot and unnecessary.

The Commission has a legal obligation, *and* a moral obligation, to take the time **to**
do Digitalization right.

Respectfully submitted,



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Dated December 20, 2002
December 20, 2002

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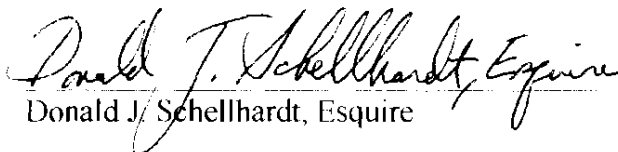
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I hereby certify that Service Copies of these Reply Comments have been sent via the U.S. Postal Service, First Class Postage Pre-Paid, to the following parties. (1) John Wells King, Esquire, Garvey Schubert Barer, 1000 Potomac Street N.W., Washington, DC 20007-3501


Donald J. Schellhardt, Esquire


December 20, 2002